

DOCKET FILE COPY ORIGINAL

KDW STAMP-IN

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

OCT - 3 2005

In the Matter of)

Federal Communications Commission
Office of Secretary

Petition for Declaratory Ruling
Regarding Self-Certification
of IP-Originated VoIP Traffic)

RM-_____

PETITION FOR DECLARATORY RULING OF GRANDE COMMUNICATIONS, INC.

Andrew Keyer
Jenkins & Gilchrist, P.C.
401 Congress Ave., Suite 2500
Austin, Texas 78701
(512) 499-3866 (voice)
(512) 499-3810 (facsimile)

Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.
Barbara A. Miller
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
(202) 955-9600 (voice)
(202) 955-9792 (facsimile)

Attorneys for Grande Communications, Inc.

October 3, 2005

SUMMARY

Grande seeks a declaratory ruling to resolve actual controversies that have arisen between Grande and several other local exchange carriers ("LECs") regarding the proper treatment of traffic terminated to end users of interconnected LECs through Grande which customers of Grande have certified as enhanced services traffic originating in voice over Internet Protocol ("VoIP") format. Specifically, the Commission should declare, where a LEC receives a self-certification from its customer that the traffic the customer will send is enhanced services, VoIP-originated traffic ("Certified Traffic"):

- that the LEC properly may rely on the customer's self-certification when the LEC makes decisions about how to route Certified Traffic for termination;
- that the LEC, where it has no information to conclude that the certification is inaccurate, may offer the customer local services and send Certified Traffic to other terminating LECs, where it is destined for an end user of another LEC, over local interconnection trunks, unless and until the Commission decides otherwise in the *IP-Enabled Services* or *Intercarrier Compensation* rulemakings or in another proceeding; and
- that other LECs, receiving Certified Traffic over local interconnection trunks from the LEC, are to treat the traffic as local traffic for intercarrier compensation purposes and may not assess access charges against Certified Traffic, unless the Commission decides otherwise in the *IP-Enabled Services* or *Intercarrier Compensation* Rulemakings or in another proceeding.

The Commission should make these declarations applicable to all Certified Traffic regardless of whether the end points of the traffic are in the same or different states.

The Commission has consistently maintained that enhanced and information services are not subject to access charges and repeatedly has taken a "hands off" approach to the regulation of enhanced/information services for the purpose of encouraging its development of such services and related technologies. This exemption from access charges has been extended to IP-telephony services, except where the Commission has expressly found otherwise. The Commission has carved out two very narrow exceptions to the general exemption, both of which underscore the general applicability of the exemption and neither of which is applicable to VoIP-

originated traffic. Accordingly, both in practice and under existing law and precedent, VoIP-originated traffic is exempt from access charges.

In order to ensure that enhanced/information service provider in actuality receive the exemption from access charges to which they are entitled, a LEC must be permitted to rely on a customer's self-certification that traffic being sent for routing or termination is enhanced/information services traffic, provided a LEC does not have information that would require it to conclude that the certification is inaccurate. Imposing obligations on LECs beyond receipt of a customer certification would be overly burdensome and likely result in an evisceration of the enhanced services access charge exemption. Permitting a LEC to rely on customer self-certification, except where the LEC has information to conclude the certification is inaccurate, appropriately balances the exemption's underlying purpose of fostering enhanced/information services with a reasonable assurance as to the qualifying nature of traffic.

The need for the requested rulings is both pressing and clear. Despite Commission statements that IP telephony traffic generally is exempt from access charges and the fact that Certified Traffic is represented as undergoing a net protocol conversion, a number of LECs contend that such traffic is nevertheless subject to access charges. These carriers are billing for access charges and, at least in one case, are threatening to block all traffic coming over local interconnection trunks if the access charges are not paid. The requested declaratory ruling will prevent LECs from usurping the Commission's domain and assuming the role of self-arbiter whether traffic is properly treated as telecommunications or enhanced/information services traffic. Commission declaration will resolve the controversies Grande has with these other LECs and clarify an important issue of national importance, preventing a fragmented and potentially conflicting approach in this area.

TABLE OF CONTENTS

| | Page |
|---|------|
| SUMMARY | i |
| INTRODUCTION AND BACKGROUND | 2 |
| ARGUMENT | 7 |
| I. THE ENHANCED SERVICES EXEMPTION AND ITS APPLICATION TO MOST FORMS OF IP TELEPHONY | 9 |
| A. The Distinctions between Basic and Information Services, on the One Hand, and Basic and Telecommunications Services, on the Other | 9 |
| B. Creation of the Enhanced Services Access Charge Exemption | 10 |
| C. Commission Examination of Access Charges As Applied to VoIP | 11 |
| II. SERVICES AS DESCRIBED IN THE SELF CERTIFICATIONS RECEIVED FROM GRANDE'S CUSTOMERS MEET THE ENHANCED SERVICES DEFINITION AND, UNDER CURRENT LAW AND REGULATION, ARE EXEMPT FROM ACCESS CHARGES | 14 |
| III. SELF-CERTIFICATION BY ENHANCED SERVICE PROVIDERS FURTHERS THE POLICIES OF THE COMMISSION AND MUST BE HONORED ABSENT KNOWLEDGE THAT A CUSTOMER'S CERTIFICATION IS UNSUPPORTED | 15 |
| IV. THE COMMISSION'S DECLARATION SHOULD APPLY TO ALL TRAFFIC SENT BY A SELF-CERTIFYING CUSTOMER | 19 |
| CONCLUSION | 23 |

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Petition for Declaratory Ruling |) | WC Docket No. |
| Regarding Self-Certification |) | |
| of IP-Originated VoIP Traffic |) | |
| |) | |

PETITION FOR DECLARATORY RULING OF GRANDE COMMUNICATIONS, INC.

Grande Communications, Inc., and its operating subsidiaries and affiliates (collectively, "Grande"), pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, respectfully petition the Commission for a declaratory ruling that Grande, a local exchange carrier ("LEC"), is permitted to rely upon a customer's self-certification that the traffic sent to Grande for termination is enhanced services traffic. More specifically, the Commission should rule that Grande is permitted to rely upon a local customer's certification that the Voice over Internet Protocol ("VoIP") traffic being sent, at a minimum, originates in IP format at the calling party's premises and therefore undergoes a net protocol conversion before being terminated on the public switched telephone network (such traffic being referred to herein as "Certified Traffic"), provided that Grande has no reason to conclude that the certification is inaccurate.

Grande requests an ancillary ruling that, based upon such certification, Grande may properly sell such customers local services and that, when Grande does so, the Certified Traffic carried over those local services is exempt from access charges. Grande seeks these rulings in order to resolve actual controversies with other LECs over the applicability of access charges to Certified Traffic. The requested rulings would resolve the controversies whether Grande (or another entity) has an obligation to pay access charges for Certified Traffic or whether

terminating LECs must treat Certified Traffic as local traffic unless and until the traffic is demonstrated or deemed to be something other than enhanced service traffic.

INTRODUCTION AND BACKGROUND

Grande is a Texas-based company that, through its certificated affiliates and operating subsidiaries, provides retail and wholesale intrastate and interstate telecommunications services for Texas customers, including residential and commercial high-speed internet access, local and long distance telephone services, and digital cable services. Grande's certificated affiliates and operating subsidiaries are "telecommunications carriers" under the Communications Act of 1934, as amended, 47 U.S.C. §3(44). Grande's principal place of business is San Marcos, Texas. Grande provides facilities-based local exchange and other telecommunications services in Austin, Corpus Christi, Dallas, Houston, Midland, Odessa, San Antonio, San Marcos, and Waco, as well as other Texas communities, comprising a broad network of cities and communities in Texas. Today, Grande competes with incumbent local exchange carriers, such as Southwestern Bell Telephone Company, as well as Time Warner, Xspedius, AllTel, and other carriers. Grande also provides cable, internet access, and data services within its service area and utilizes its own high-capacity fiber-optic network to do so.

Among the services provided by Grande are so-called "termination services." Grande provides termination services by accepting traffic from incumbent LECs ("ILECs"), competitive LECs ("CLECs"), interexchange carriers ("IXCs"), enhanced service providers ("ESPs"), and other carriers and providers that it terminates to its own end user customers. Grande also provides termination services by accepting traffic from its IXC, ESP, and other provider customers and forwarding it to other local exchange carriers for termination to their end user customers. It is the latter method of providing termination services, in the particular

circumstances described below, that raises the issues Grande hopes to resolve through the filing of this Petition.

It is no secret that, in the communications marketplace today, there are a number of providers who offer customers the ability to originate traffic in Voice over Internet Protocol ("VoIP") format and complete calls to the public switched network, both locally and long distance.¹ To date, as explained further herein, the Commission has assumed jurisdiction over such VoIP-originated traffic, and the question, which has not yet been resolved, over whether this traffic is properly categorized under the Communications Act as information services or telecommunications services.² Such classification, of course, will help and is even necessary to address a variety of important ancillary questions, including the intercarrier compensation applicable to VoIP. In the interim, however, the Commission has stated that "IP telephony [is] generally exempt from access charges"³

During this interim, while the Commission *IP-Enabled Services* and *Inter-carrier Compensation* proceedings are pending, of course, it is necessary for providers of enhanced and VoIP-originated services to find a means to complete their calls destined for end users on the public switched telephone network ("PSTN") and this means handing the traffic off to local

¹ See, e.g., http://vonage.com/help_vonage.php (describing how Vonage gives a customer "local and long distance calling anywhere in the US (including Puerto Rico) and Canada for one low price . . . [using the customer's] existing high-speed Internet connection (also known as broadband) instead of standard phone lines."); <http://www.sunrocket.com/>; <http://www.cytratel.com/services.html>; <http://www.centricvoice.com/services.asp>.

² See *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004).

³ *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9613 (2001).

exchange carriers. Some incumbent LECs have taken the position, despite the Commission's statements about the general treatment of IP telephony, that such traffic is subject to terminating access charges simply because it touches the PSTN, completely ignoring whether the traffic undergoes a net protocol conversion or otherwise includes enhanced functionalities. In short, these ILECs wish to prejudge the questions pending before the Commission regarding regulatory classification and intercarrier compensation which have been raised in the Commission's *IP-Enabled Services* and *Inter-carrier Compensation* rulemakings among other proceedings, and apply them to the period prior to those proceedings' resolution. Through this Petition, Grande seeks a resolution to current controversies to gain guidance about how to address and handle VoIP-originated traffic delivered to it for termination now.

Grande, acting as a local exchange carrier, is terminating traffic for certain customers which the customers have self-certified as enhanced services traffic ("Certified Traffic"). In particular, the customers have self-certified that the traffic, which is terminated in time-division multiplexed ("TDM") format, originates as IP telephony traffic in Voice over IP ("VoIP") format. See Exh.1 (representative form used by Grande for customer self-certifications). Grande requests the self-certification as a condition of providing local service when a customer indicates that it is sending traffic that originates as VoIP to Grande for termination. As such, by definition, the traffic is enhanced services traffic as defined in 47 U.S.C. § 153(2) because it undergoes a net protocol conversion.⁴

⁴ See, e.g., *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457, 7461, ¶ 7 (2004) (certain services that involve no net protocol conversion are information services); *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, 21957-58, ¶¶ 106-107 (1996) (certain services that involve no net protocol conversion are information services); *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*;

...Cont'd

Certified Traffic is sent to Grande over facilities dedicated to its individual customers, such as T-1s. As a result, all Certified Traffic is easily identified as such when Grande receives it. Grande sorts all of the Certified Traffic by destination and, if Grande does not terminate Certified Traffic to one of its own end users, Grande forwards the Certified Traffic with all signaling received by Grande, e.g. calling party number ("CPN"), to the local carrier that serves the end user or performs a transiting function for other LECs. Typically, this second LEC is an ILEC. When Grande forwards the Certified Traffic to other local carriers for termination, it sends it over local interconnection trunk groups, and the Certified Traffic is mixed in with other local traffic. When Certified Traffic is sent to ILECs with whom Grande has reciprocal compensation arrangements, Grande pays the ILECs reciprocal compensation for the termination of billed Certified Traffic to the called party or exchanges it on a bill and keep basis, as it does with other local traffic, depending on the interconnection arrangements.⁵

Several ILECs have begun assessing access charges against Grande for Certified Traffic. For example, Alltel Communications Products ("Alltel"), disputes Grande's delivery of the Certified Traffic over local interconnection trunks since Grande first began sending Certified Traffic to Alltel late in 2004. Grande has disputed all of Alltel's bills for access charges for Certified Traffic, and Alltel has summarily denied all of Grande's claims. Furthermore, Alltel has informed Grande that it reserves the right to block the Certified Traffic if Grande does not

and Policy and Rules Concerning Rates for Competitive Common Carrier Service and Facilities Authorizations Thereof; Communications Protocols under Sections 64.702 of the Commission's Rules and Regulations, 3 FCC Rcd 1150, 1157-58 ¶¶ 53-57 (1988) (services undergoing net protocol conversion should be treated as enhanced by interconnecting carriers).

⁵ If the carrier to whom Grande send the Certified Traffic directly performs a transiting function and forwards the Certified Traffic to a third LEC, then Grande may instead pay a transiting charge, again depending on the interconnection arrangements.

pay the disputed charges. Notably, if Alltel attempts to block the Certified Traffic, it will have no practical choice but to block *all* traffic that Grande is sending to Alltel over the affected interconnection trunks, whether VoIP-originated or circuit-switched originated, for termination. Self-help, such as that threatened by Alltel, would disrupt the service of many of Grande's customers, not just the customers delivering VoIP-originated traffic.

Alltel, and presumably other LECs that are assessing access charges for the Certified Traffic, claims the calls are interexchange calls subject to access charges apparently based solely on the originating line information of the Certified Traffic, such as CPN, and the fact that the traffic is terminated on the PSTN. Access charges, of course, are much higher than reciprocal compensation rates. Grande maintains that its treatment of the Certified Traffic as non-access local traffic is proper because the customers have certified, in essence, that the traffic undergoes a net protocol conversion and is thus enhanced or information services traffic, as described above. In these circumstances, it is Grande's position that the customer is entitled to purchase local service from Grande to access the local PSTN.

Grande seeks the following rulings:

- that a LEC properly may rely on customer self-certifications that the TDM traffic they are sending to the CLEC originated in a VoIP format (or is otherwise enhanced services traffic) when the LEC makes decisions about how to route such traffic for termination, *i.e.*, whether to send such traffic to other LECs over access or local interconnection trunks, provided the LEC does not have information to conclude that the certification is inaccurate;
- that a LEC, where it receives such certification and does not possess information to conclude that the certification is inaccurate, may offer the customer local services and send the traffic to other terminating LECs, where it is destined for an end user of another LEC, over local interconnection trunks, unless and until the Commission decides otherwise in the *IP-Enabled Services* or *Intercarrier Compensation* Rulemakings or in another proceeding; and
- that other LECs, receiving Certified Traffic from such a LEC over local interconnection trunks, are to treat that traffic as local traffic for intercarrier compensation purposes and may not assess access charges for such traffic, unless and until the Commission decides otherwise in the *IP-Enabled Services* or *Intercarrier Compensation* Rulemakings or in another proceeding.

The rulings that Grande seeks are consistent with and promote existing Commission policy and rules and prior decisions. Further, the rulings, which are urgently needed, will also prevent ILECs from prejudging the proper regulatory treatment of VoIP-originated traffic under consideration in current Commission rulemakings. The Commission, therefore, pursuant to Section 1.2 of its Rules, should issue the requested ruling and resolve the current controversies between Grande and other carriers regarding Certified Traffic.

ARGUMENT

In an effort to further its policy of promoting the development of enhanced and information services, the Commission has long maintained that enhanced and information services are not subject to access charges. The access charge exemption has been reiterated on many occasions and, as a general matter, has been extended to IP telephony services, except where the Commission has expressly found otherwise. Services that satisfy the criteria in the self-certifications that are the subject of this petition are enhanced or information services, and thus exempt from access charges.

Sound policy requires that local carriers, such as Grande, should be entitled to rely on self-certifications from customers, absent specific knowledge that such self-certifications are not accurate and that the Certified Traffic is not, in fact, enhanced according to the Commission's rules and decisions.⁶ A ruling finding that Grande and other local carriers properly may rely on self-certification from the customer as to the nature of Certified Traffic would not only be

⁶ By filing this Petition and seeking a ruling regarding the written self-certifications described herein, Grande does not mean to imply that self-certifications in other forms (e.g., in correspondence as opposed to contracts, or verbal versus written) that a customer's traffic is enhanced, absent known facts to the contrary, may not also be an adequate basis for a local carrier selling a self-certifying customer local services, treating that customer as an enhanced service provider, and handling its traffic as enhanced services traffic.

consistent with existing policy, but would most effectively serve the goals behind that policy. Imposing obligations on local carriers over and above self-certification would result in carriers being required to exhaustively police all of the traffic sent to it for termination or, the more likely outcome, frustrate the continued growth and development of VoIP applications. Permitting carriers to rely on customer certification would invoke the already widely utilized telecommunications practice of self-certification. Self-certification is an established and integral part of telecommunications regulation and enforcement already and, as such, this approach is perfectly consistent with existing industry practice.

For the foregoing reasons and as amplified below, the Commission should issue the requested rulings. The Commission, consistent with its other rulings regarding its jurisdiction over IP Telephony, should make clear that it applies to all VoIP-originated traffic that falls within the certifications described herein, even if the end points of the traffic are within the same state.

I. THE ENHANCED SERVICES EXEMPTION AND ITS APPLICATION TO MOST FORMS OF IP TELEPHONY.

A. The Distinctions between Basic and Information Services, on the One Hand, and Basic and Telecommunications Services, on the Other.

In the Commission's *Computer Inquiries* line of decisions from the 1970s and 1980s,⁷ the Commission first created a distinction between basic services and enhanced services. A basic

⁷ See *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Notice of Inquiry, 7 FCC 2d 11 (1966); *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Docket No. 20828, Tentative Decision and Further Notice of Inquiry and Rulemaking, 72 FCC 2d 358 (1979); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980) ("*Computer II Final Decision*"); *Amendment of Section 64.702 of the*

... Cont'd

service is transmission capacity for the movement of user information without any net change in form or content, whereas an enhanced service contains a basic service component underlying the offering but also involves some degree of data processing (e.g., information storage or retrieval, or a net protocol conversion) that changes the form or content of the transmitted information.⁸

As a general matter, providers of basic communications services have been subjected to regulation (under Title II of the Communications Act) and the payment of access charges, whereas the provision of enhanced services which, in effect, added an applications layer to the underlying communications network platform, has been free from regulation, including certification requirements.

In the Telecommunications Act of 1996 (the 1996 Act),⁹ Congress codified definitions of the terms "telecommunications," "telecommunications service," and "information service."¹⁰ Subsequently, in the Commission's, *Non-Accounting Safeguards Order*, the agency determined that the statutory term "telecommunications service" is practically synonymous with the Commission's *Computer Inquiries* definition of a *basic* service, and the statutory term

Commission's Rules and Regulations, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986) (subsequent cites omitted) (collectively the "Computer Inquiries").

⁸ *Computer II Final Decision*, 77 FCC 2d at 419-22. *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*; and *Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorization Thereof; Communications Protocols Under Section 64.702 of the Commission's Rules and Regulations*, CC Docket No. 85-229, Report and Order, 2 FCC Rcd 3072, 3081-82, paras. 64-71 (1987)

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁰ 47 U.S.C. §§ 153(20), (43), and (46).

"information service" is similar to the definition of an *enhanced* service.¹¹ The Commission found that, like basic services and enhanced services, telecommunications services and information services are separate and distinct categories, with Title II regulation applying to telecommunications services but not to information services.¹²

B. Creation of the Enhanced Services Access Charge Exemption.

Consistent with the regulatory distinctions fashioned by the Commission, and later codified by Congress, the Commission has proceeded to ensure that enhanced and information services are and have been free not only from regulation but also from indirect treatment as telecommunications services. Most importantly, this approach led to the determination in 1983 that enhanced service providers would be exempted from interstate access charges for such services, and were eligible to terminate to the PSTN through the purchase and use of local telecommunications services.¹³ This exemption was granted in light of the fact that providers of enhanced services (which had an underlying communications component) were seen to be operating in a volatile and developing industry, and that such providers and the growth of advanced technologies like the Internet and IP-enabled applications generally would suffer if access charges were imposed on such offerings. The Commission specifically retained the

¹¹ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21905, 21955-58 (1996). See also *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11507-08, 11516-17 (1988) ("Report to Congress").

¹² *Stevens Report*, 13 FCC Rcd at 11507-08.

¹³ *MTS and WATS Market Structure*, 97 FCC 2d 682, 715 (1983).

exemption on several occasions over the next fifteen years,¹⁴ supporting it indirectly on numerous other occasions.

C. Commission Examination of Access Charges As Applied to VoIP.

In 1998, the Commission issued a Report to Congress on Universal Service in which the Commission for the first time engaged in a tentative and preliminary discussion whether certain types of IP-enabled applications, specifically, IP-voice telephony or VoIP as it is now better known, could be categorized “telecommunications” or “telecommunications services” under the Communications Act or whether these fell outside those categories.¹⁵ The *Report to Congress* also tentatively entertained whether any providers of IP telephony should be subject to access charges. The Commission reached *no* definitive conclusions regarding the regulatory classifications of any type of IP telephony as information or telecommunications service, observing with respect to phone-to-phone IP telephony that:

[b]ecause of the wide range of services that can be provided using packetized voice and innovative CPE, we will need, *before making definitive pronouncements*, to consider whether our tentative definition of phone-to-phone IP telephony [as telecommunications] accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be *quickly overcome by changes in technology*.¹⁶

In short, the Commission left unresolved basic questions regarding the regulatory categorization of *all* IP-enabled telephony products, maintaining its “hands off” regulatory

¹⁴ *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, 2631 (1988); *Access Charge Reform*, 12 FCC Rcd 15982, 16133 (1997).

¹⁵ *Report to Congress, supra*, 13 FCC Rcd 11501. Specifically, the Commission looked at phone-to-phone IP Telephony where the protocol conversion occurred within IP gateways, and computer-to-computer IP Telephony where the protocol conversion occurred within the users' equipment.

¹⁶ *Id.* (emphasis added).

approach first adopted in 1983. In doing so, the Commission also noted that technology regarding IP-enabled applications was developing so rapidly that any regulatory classifications it might venture to adopt were as likely as not to be quickly made obsolete, something the intervening six years have revealed to be prescient.

Since the Commission issued its *Report to Congress*, the Commission has commenced a comprehensive rulemaking to examine myriad aspects of IP-enabled services, including VoIP. Among the subjects is the proper compensation between carriers for carrying and exchanging IP-enabled services and whether enhanced service providers should be subject to access charges.¹⁷ That rulemaking is still pending, as is further development of the Commission's treatment of IP Telephony services for intercarrier compensation purposes. However, in commencing its pending rulemaking on intercarrier compensation issues, the Commission reiterated that, under current Commission policies and practice, "IP telephony [is] generally exempt from access charges"¹⁸

To date, the sole instances in which the Commission has departed from its hands off approach to IP-telephony and VoIP has been two very limited rulings. Specifically, on April 21, 2004, the Commission concluded in the *AT&T VoIP Declaratory Ruling* that a certain form of IP telephony were telecommunications and subject to access charges.¹⁹ In making this determination, however, the Commission emphasized that its decision was narrow and that its finding that the traffic was telecommunications services traffic subject to access charges was

¹⁷ *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶¶ 61-62 (2004).

¹⁸ *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9613 (2001).

¹⁹ *Petition for Declaratory Ruling that AT&T's IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, Order (Apr. 21, 2004).

limited to situations where, for 1+ dialed calls, internet protocol is used solely for transmission purposes and *there is no net protocol conversion, and there are no enhanced features or functionalities enabled by the use of IP.*²⁰ Because of the extremely narrow finding in the *AT&T VoIP Declaratory Ruling*, it does not abrogate the Commission's fundamental position under current law of not regulating IP-enabled telephony applications and holding those services free from access charges.

More recently, the Commission issued a second declaratory ruling finding other services subject to access charges in response to a separate AT&T petition.²¹ In this situation, AT&T sought a ruling that a certain type of prepaid calling card service was an information service because an advertising message was inserted in calls made with AT&T's prepaid calling cards.²² The Commission found that these factors did not alter the fundamental character of the calling card service, and that AT&T's service is properly classified as a telecommunications service. Again, the Commission, as in the *AT&T VoIP Declaratory Ruling*, made clear that its decision was extremely narrow. Indicative of the very limited scope of the Commission's ruling, the Commission declined to extend its ruling to a variant of AT&T's pre-paid calling service that used Internet protocol transmission, deferring this question to a rulemaking it instituted

²⁰ *Id.* ¶ 18.

²¹ AT&T Corp, Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, WC Docket No. 03-133, 20 FCC Rcd. 4826 (2005).

²² As explained by the Commission, "During call set-up, the customer hears an advertisement from the retailer that sold the card. Only after the advertisement is complete can the customer dial the destination phone number. Other than the communication of the advertising message to the caller, there is no material difference between AT&T's "enhanced" prepaid calling cards at issue in this Order and other prepaid calling cards." *Id.* at ¶ 6 (footnotes omitted).

simultaneously with the 2005 declaratory order.²³ Instead, the Commission "limited [its] decision in this Order to the calling card service described in AT&T's original petition."²⁴

In summary, to date, the Commission as a general matter has exempted enhanced and information services from treatment as telecommunications services and from being subject to access charges. This exemption, as a matter of practice, has applied to IP-telephony, including VoIP, with exceptions that the Commission has been careful to articulate in extremely limited fashion.

II. SERVICES AS DESCRIBED IN THE SELF CERTIFICATIONS RECEIVED FROM GRANDE'S CUSTOMERS MEET THE ENHANCED SERVICES DEFINITION AND, UNDER CURRENT LAW AND REGULATION, ARE EXEMPT FROM ACCESS CHARGES.

As discussed in the Introduction and Background section, Grande, among other things, sells local and interexchange termination services in Texas. Certain customers, seeking to purchase Grande's local services to terminate VoIP-originated traffic, have informed Grande that the traffic that would be sent using the desired Grande services is enhanced services traffic, *i.e.*, traffic that, at a minimum, undergoes a net protocol conversion (apart from any other enhanced capabilities that may be made available to end users of the service). Specifically, Grande requires these customers, whether they themselves are the VoIP providers or are an intermediate provider, to attest that the voice traffic delivered to Grande for termination as TDM traffic originated in IP protocol at the premises of the calling party. *See* Exh.1.

²³ "In the second variant of the service, the service provided to the customer is the same as the service described in the original petition, but some of the transport is provided over AT&T's Internet backbone using Internet Protocol technology. AT&T states that these calls are not dialed on a 1+ basis and therefore are not covered by the Commission's prior determination that "IP-in-the-middle" calls are telecommunications services, not information services." *Id.* at ¶ 12 (footnotes omitted).

²⁴ *Id.* at ¶ 1.

Traffic that meets the criteria set forth in the certifications that Grande has received is, by definition, enhanced and not subject to access charges. The traffic has, at a minimum, undergone a net protocol conversion. The customers who would send such traffic to Grande are entitled to have that traffic treated as enhanced services traffic and may purchase local services from Grande. Grande, in turn, is entitled, indeed required, to sell the customer local connections at their request and to route and terminate such traffic accordingly. At bottom, there is no question that, were the Certified Traffic the enhanced services traffic that Grande's customers have certified it to be, then this traffic under current law and policy is not subject to access charges; Grande is permitted to treat and terminate the Certified Traffic as local traffic. The only remaining questions, and the ones for which Grande seeks a declaratory ruling, are whether Grande properly may rely upon such customers' self-certifications, where it does not have information leading to a conclusion the certification is inaccurate, and whether the local carriers with whom Grande interconnects are required to treat the Certified Traffic as local traffic exempt from access charges.

III. SELF-CERTIFICATION BY ENHANCED SERVICE PROVIDERS FURTHERS THE POLICIES OF THE COMMISSION AND MUST BE HONORED ABSENT KNOWLEDGE THAT A CUSTOMER'S CERTIFICATION IS UNSUPPORTED.

In order to further the policy of encouraging the growth and development of IP-enabled services, including VoIP, and remain consistent with its treatment of enhanced services to date, the Commission should issue a ruling that local carriers are required to treat Certified Traffic as enhanced *provided that* the local carrier has no reason to know that it is not enhanced traffic. The Commission should declare that such Certified Traffic is exempt from access charges, and that the providers who wish to send such traffic to local carriers for termination are entitled to purchase local services as end user customers, consistent with the Commission's long-standing access charge exemption for ESPs. To hold otherwise would impose overwhelming and

unwarranted burdens on terminating carriers let alone be inconsistent with prior practice and policy.

In fact, the issue is not simply that the terminating LECs in Grande's position must be *permitted* to rely upon such certifications and provide termination service without subjecting the traffic to access charges. Grande submits that LECs are *obligated* to sell local services to a self-certifying entity and exempt Certified Traffic from access charges. The Commission has consciously made the determination to exempt enhanced services traffic from access charges in an effort to encourage growth and innovation in the IP-enabled services arena. As a result, terminating carriers are under an affirmative obligation to enable enhanced service providers to receive the exemptions to which they are entitled and further this policy of the Commission.

The terminating or intermediary carrier must be able to rely on the customer's certification as to the nature of the traffic. Obtaining a certification from the customer, in Grande's case written certification of the sort shown in Exhibit 1, constitutes a reasonable inquiry on the part of the carrier and provides an informed basis for determining the nature of the traffic and terminating it accordingly. Imposing obligations other than a certification from the customer would be unduly burdensome and unreasonable, would slow the development of innovative enhanced services, and would be contrary to the telecommunications industry's entire system of self-certification.

Grande, or any other LEC providing termination services, should not be required to conduct any inquiry or investigation into the nature of the traffic being terminated, routed or transferred beyond requesting self-certification before providing services. Any such requirements would turn LECs into the policeman of the enhanced and information services industries, not to mention the telecommunications industry, and service providers. Policing

every piece of traffic routed to it by certifying customers would render impractical the provision of the service at all and impose an overwhelming burden on these terminating carriers and their customers who offer their respective customers enhanced or information services. The net result would be a sharp increase in local carriers' costs and that the prices of both telecommunications and enhanced/information services would rise, to the detriment of both the telecommunications and information services industries and the customers of such services.

Because of the burden and costs of investigating the nature of the traffic and the potential liabilities associated with any claim that customer Certified Traffic is not enhanced services traffic exempt from access charges, imposing an obligation beyond customer certification would likely result in terminating carriers simply refusing to treat enhanced services traffic sent to it by customers as exempt from access charges. Making the local exchange carriers gatekeepers in this fashion would undermine competition and innovation in the enhanced and information services industries. This outcome would defeat the Commission's policy of not subjecting this traffic to access charges and undermine its long-standing practice of encouraging the growth of enhanced and information services.

Furthermore, permitting terminating carriers like Grande to rely on the customer's self-certification is consistent with general telecommunications policy and practice. The entire telecommunications system is premised on the concept and practice of self-certification. To Grande's knowledge, very few, *if any*, local carriers conduct an investigation of would-be customers that claim they are enhanced service providers, apart from credit checks and other measures that might apply to non-enhanced service provider customers. Instead, if a customer is going to buy a local service, whether from a tariff or a contract, that customer is, by its actions, representing and warranting that it is eligible for the service.

Further, the Commission itself has expressly relied upon a system of self-certification in a variety of contexts. For example, rural LECs self-certify their eligibility to be treated as rural LECs under the Act and the Commission's regulations.²⁵ Another example is that carriers seeking to obtain a high-capacity loop or transport unbundled network elements self-certify that their use of such facilities meet the conditions for purchase.²⁶ Recognizing self-certification of enhanced services traffic and placing the self-certification described here within the construct that the Commission has traditionally used, implicitly and explicitly, is logical, practical, and consistent with existing policy.

While carriers should not be required to investigate the authenticity of every entity that purchases local services and claims to be an enhanced service provider, where a carrier possesses knowledge that the entity in fact is not an enhanced or information service provider or that the alleged enhanced services, in fact, are telecommunications services, the carrier may deny the services requested by the customer and treat the traffic as non-enhanced traffic. Similarly, a carrier's obligation to treat its customer's traffic as exempt from access charges does not extend to traffic that the carrier knows, under Commission decisions, is not enhanced as stated in the self-certification. Once again, in circumstances when the carrier has information that undermines the self-certification, the carrier may, in fact, be obligated not only under its own tariffs, but with its agreements with other carriers, to handle the traffic as interexchange access traffic. The Commission should declare, however, that without such actual knowledge, local

²⁵ *Self-Certification as a Rural Telephone Company*, Public Notice, DA 97-1748, (rel. Sept. 23, 1997).

²⁶ *In the Matter of Unbundled Access to Network Elements*, FCC 04-290, ¶ 234 (rel. Feb 4, 2005). See also *In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996*, FCC 00-183 at ¶ 29 (rel. June 2, 2000).

carriers are entitled to rely upon self-certifications they received in good faith from their customers that traffic is enhanced, as described above.

IV. THE COMMISSION'S DECLARATION SHOULD APPLY TO ALL TRAFFIC SENT BY A SELF-CERTIFYING CUSTOMER.

The requested ruling should apply regardless of the end points of the traffic in question, which may not even be known in the case of VoIP-originated traffic, as the Commission recognized in its *Vonage* decision. Under the Commission's decisions, enhanced traffic is generally treated as interstate in nature and subject to the Commission's sole jurisdiction.²⁷ More specifically, to the matter at hand, the Commission has asserted its exclusive jurisdiction over some types of IP telephony services and has strongly indicated that it has such jurisdiction over most *if not all* IP-enabled services, including VoIP.

In its November 2004 *Vonage* decision, the Commission preempted a state commission from regulating a VoIP provider's service.²⁸ In doing so, the Commission stated that the nature of the services at issue there, which originated in VoIP format, as does the Certified Traffic that is the subject of this Petition, brought the regulatory treatment of the traffic squarely under the sole jurisdiction of the Commission. The Commission further stated that it would preempt any effort by state commissions to regulate certain categories of VoIP service.²⁹

²⁷ See *MTS and WATS Market Structure*, Memorandum Op. and Order, 97 FCC2d 682, 715 ¶ 83 (1983) (enhanced service is "jurisdictionally interstate"); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd. 2631, 2631 ¶ 2 (1988) (describing companies that provide enhanced services as "interstate service providers").

²⁸ *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004).

²⁹ *Id.* ¶ 32.

In a subsequent order released in June of this year, the Commission reiterated the inherently interstate nature of many IP telephony services. Specifically, the Commission established its jurisdiction over “interconnected VoIP services,” and found the following characteristics to be definitional:

- (1) the service enables real-time, two-way voice communications;
- (2) the service requires a broadband connection from the user’s location; (3) the service requires IP-compatible CPE; and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN.³⁰

The Commission noted that interconnected VoIP services, as defined, “are covered by the statutory definitions of ‘wire communication’ and/or ‘radio communication’ because they involve ‘transmission of [voice] by aid of wire, cable, or other like connection . . .’ and/or ‘transmission by radio . . .’ of voice,” and concluded the services, as a result, come within the scope of the Commission’s subject matter over interstate communications jurisdiction granted in section 2(a) of the Act.³¹

In asserting its jurisdiction over interconnected VoIP services, as defined in the *VoIP E911 Order*, the Commission recognized that some kinds of VoIP service can be supported over a dialup connection.³² The Commission apparently limited its decision in the Order to broadband connections because of its expectation that most VoIP services will involve a

³⁰ *In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 and 05-196 (rel. June 3, 2005) ¶ 20 (“VoIP E911 Order”). The term “IP-compatible CPE” refers to end-user equipment that processes, receives, or transmits IP packets. *Id.* n. 77.

³¹ *VoIP E911 Order*, ¶ 24.

³² *Id.* at ¶ 24, n. 76.

broadband connection.³³ Although the *VoIP E911* Order did not apply to narrowband services, the basis for the Commission's jurisdiction over broadband interconnected VoIP services, as explained above and in the Order, applies equally to dial-up and other non-broadband VoIP services.

As explained earlier, the Certified Traffic is being represented to Grande as enhanced services traffic at a minimum for the reason that it originates with one user in IP format and terminates on the PSTN in a different format. As such, as in the *Vonage* and *E911* cases, the traffic is inherently interstate in nature and subject to the Commission's comprehensive jurisdiction, regardless of the end points of the call. As a result, the Commission has sole jurisdiction to determine the issues raised in this Petition, and the ruling requested should apply to all affected services, whether the endpoints are in the same state or in different states.

Furthermore, those courts that have addressed the issue have recognized the importance and primacy of the Commission's jurisdiction over the application of access charges to IP-enabled services. In *Frontier Telephone of Rochester, Inc. v. USA Datanet Corp.*, ___ F.Supp.2d ___, 2005 WL 2240356 (W.D. N.Y. 2005), a case involving similar issues to those presented in this Petition, the court recognized the questions presented involved policy and technical considerations with the particular expertise of the Commission and further acknowledged the importance of the Commission's review of whether specific IP-enabled services are subject to access charges, and deferred to the Commission's jurisdiction by staying the proceedings pending a rulemaking by the Commission. The United States District Court for the Eastern District of Missouri similarly deferred to the Commission on this issue and in doing so stated that

³³ *Id.* The Commission sought comment in a further Notice of Proposed Rulemaking on whether it should expand the scope of its E911 order to include VoIP services that do not require a broadband connection. *Id.* ¶ 54

“[t]he FCC’s ongoing Rulemaking proceedings concerning VoIP and other IP-enabled services make deferral particularly appropriate in this instance.”³⁴

CONCLUSION

For the reasons stated herein, the Commission should declare, where a LEC receives self-certifications from its customer that the traffic the customer will send is enhanced services, VoIP-originated traffic that undergoes a net protocol conversion (or is otherwise enhanced, IP-enabled traffic)

- that the LEC properly may rely on the customer’s self-certification when the LEC makes decisions about how to route such traffic for termination, *i.e.*, whether to send such traffic to other LECs over access or local interconnection trunks, provided the LEC does not have information to conclude that the certification is inaccurate;
- that the LEC, where it does not possess information to conclude that the certification is inaccurate, may offer the customer local services and send the traffic to other terminating LECs, where it is destined for an end user of another LEC, over local interconnection trunks, unless and until the Commission decides otherwise in the *IP-Enabled Services* or *Intercarrier Compensation* Rulemakings or in another proceeding; and
- that other LECs, receiving such traffic from such a LEC over local interconnection trunks, are to treat that traffic as local traffic for intercarrier compensation purposes and may not assess access charges for such traffic, unless and until the Commission decides otherwise in the *IP-Enabled Services* or *Intercarrier Compensation* Rulemakings or in another proceeding.

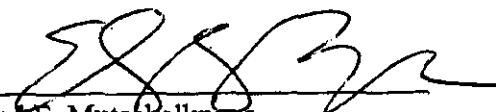
³⁴

Southwestern Bell Telephone, L.P. v. Vartec Telephone, Inc., ___ F.Supp.2d ___, 2005 WL 2033416 (E.D. Mo. 2005). On September 26, 2005, the Commission put out for public comment two petitions for declaratory ruling filed by SBC and Vartec, respectively, regarding the application of federal law to the questions of the applicability of access charges to IP-enabled traffic of a sort apparently different from that described in the self-certifications that Grande has received, in that the traffic as described by those petitions does not appear to be VoIP-originated.

The Commission should make these declarations applicable to all Certified Traffic, regardless of whether the end points of the traffic are in the same or different states.

Respectfully submitted,
GRANDE COMMUNICATIONS, INC.

Andrew Kever
Jenkins & Gilchrist, P.C.
401 Congress Ave., Suite 2500
Austin, Texas 78701
(512) 499-3866 (voice)
(512) 499-3810 (facsimile)


Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.
Barbara A. Miller
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
(202) 955-9600 (voice)
(202) 955-9792 (facsimile)

Attorneys for Grande Communications, Inc.

October 3, 2005

Verification of Andy Sarwal

My full name is Andy Sarwal, and I am over the age of eighteen years old. I am currently General Counsel for Grande Communications, Inc. ("Grande") a corporation organized and existing under the laws of Delaware, with its principal office located at: 401 Carlson Circle; San Marcos, Texas 78666 and on whose behalf I make this Verification. I have reviewed the foregoing Petition for Declaratory Ruling of Grande Communications, Inc ("Petition"). The facts as set forth in the Petition are true and correct, to the best of my knowledge, information, and belief.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 3, 2005.

GRANDE COMMUNICATIONS, INC.

By: _____

Andy Sarwal

VOIP TERMINATIONS SUPPLEMENT

1. **Scope.** Grande shall provide VoIP Terminations ("Services") to Customer and Customer agrees to purchase the Services according to the rates and charges as set forth in the attached Service Order(s).

2. **Term.** Grande's obligation to provide and Customer's obligation to accept and pay for Services shall commence on the date that Grande first makes Services available to Customer under the initial Service Order ("Effective Date"), provided however if this Supplement, or any Service Order, is terminated prior to the Effective Date, Grande may assess, and Customer agrees to pay, a charge for all pre-engineering and other installation efforts undertaken on Customer's behalf. Grande shall be responsible for notifying Customer of the Effective Date. Each Service Order shall set forth a term for Services purchased hereunder ("Term"). The initial term of this Supplement shall be the greater of (i) one year commencing on the Effective Date or (ii) the period commencing on the Effective Date and continuing through the end of the Term, which is the last to expire. This Supplement shall automatically renew for additional one year periods, unless notice of termination is given by either party no less than ninety (90) days prior to the expiration date of the initial term or any renewal term.

3. **Customer Facilities.** Customer shall have sole responsibility for installation, testing and operation of facilities, services and equipment other than those specifically described in the Service Order and provided by Grande as part of the Services, if any. Customer and its end users will originate calls on the non-published telephone number(s) assigned to Customer by Grande in accordance with the Service Order. Customer shall be responsible for engineering and obtaining access from Grande within the appropriate Grande local calling scope of each dialed number on a T-1 basis from Grande to Grande's POP. Customer shall be responsible for engineering and obtaining access from Grande to meet published standards for the telecommunications services, currently the P.01 standard average busy hour grade of service, for each telephone number(s) assigned to Customer by Grande and also for access from Grande's POP to Customer's POP (which access is obtained from a provider other than Grande). Customer shall only use the Services for transmission of local calls between the Grande local calling scope and Customer's POP. Customer shall provide all facilities and equipment for such transmission. In no event shall the untimely installation, faulty operation or non-operation of Customer facilities or equipment relieve Customer of its obligation to pay charges for the Services.

4. **Delivery of Services.** Grande shall deliver calls, to Customer Facilities, originating from the Grande local calling scope when Grande has assigned the dialed number to Customer. Grande shall terminate calls, from Customer Facilities, where the dialed number is within the Grande terminating local calling scope. Customer shall deliver to Grande 10-digit CPN/ANI and jurisdiction of each terminated call shall be determined by comparing the 10-digit CPN/ANI/JIP to the dialed number. Calls terminated without CPN/ANI/JIP shall be jurisdictionally classified as interstate.

5. **Service Warranty.** Grande warrants that the Services will be a voice grade T-1 level of service (the "Technical

Standards"). Grande shall use reasonable efforts under the circumstances to remedy any delays, interruptions, omissions, mistakes, accidents or errors in the Services (the "Defect") and restore the Services in accordance with the Technical Standards. If a portion of the Service fails to conform to the Technical Standards at any time and such failure continues for more than a period of two consecutive hours after delivery of written notice thereof by Customer to Grande, then Customer shall receive a credit (an "Outage Credit") at the rate of 1/720 of the monthly charges applicable to the affected portion of the Service for each consecutive hour in excess of the first two consecutive hours that the affected Service fails to conform to the Technical Standards. If Services fail to conform to the Technical Standards at any time for more than 30 consecutive days after Grande receives Customer's written notice thereof, then Customer may cancel the affected Service without a cancellation charge, with such termination effective upon Grande's receipt of Customer's written notice of termination. Customer shall not be entitled to any Outage Credit and any cancellation right shall not apply, however, in the event any Defect is caused or contributed to, directly or indirectly, by any act or omission of Customer or any of its Customers, affiliates, agents, invitees or licensees.

6. **Miscellaneous Charges.** Grande requires a \$500 (one-time) service order fee for the initial order with Customer, and requires a \$250 (one-time) non-recurring service order fee for additional port-based orders beyond the first order.

7. **Termination.** If Customer has agreed to minimum monthly commitments and Customer terminates this Supplement or ceases usage of the Services prior to the end of the Term for any reason other than a Grande default, Customer shall remain liable for and shall within fifteen (15) days of such termination pay an amount equal to all waived nonrecurring charges and fees plus fifty percent (50%) of all minimum monthly recurring revenue commitments and any other commitments times the number of months remaining in the Term.

8. **VOIP Traffic.** Customer represents, warrants, and agrees that all Service rendered by it hereunder shall be designed, produced, installed, furnished and in all respects provided and maintained in conformance and compliance with applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement. Customer further represents, warrants, and agrees that it shall be responsible for applying for, obtaining and maintaining, at its expense, all registrations and certifications, which may be required by such authorities. Customer shall secure and maintain in full force and effect all licenses, permits and authorizations from all governmental agencies to the extent that the same are required or necessary for the performance of its obligations hereunder including without limitation registering or filing this Agreement with the appropriate governmental agency in the event such registration is required by local law. Customer shall provide evidence of the foregoing to Grande upon Grande's written request. Customer represents, warrants, and agrees that it is in compliance with all applicable laws and regulations, related to the routing and identification of traffic and that the traffic it delivers to Grande for Services hereunder shall be enhanced traffic as such is defined in 47 U.S.C. Section 153(20) ("VOIP Traffic") and which originated as VOIP Traffic. Additionally,

Customer requires its underlying customers, to the extent the end user is not directly transmitting traffic to Customer, to comply with all applicable laws and regulations relating to the routing and identification of voice traffic, including but not limited to the specific practices discussed herein.